

M E M O R A N D U M

To : Ed Bailey, Fish & Neave February 9, 1987  
From: Lee Pollak, Philip Morris Privileged and Confidential  
Re : Channel Ventilated Filter Product

As you know, Philip Morris is working to develop a channel ventilated filter product.

In this connection, we wish to make a complete review of the publications and patent coverage (existing and expired) which exist in this area. We wish to obtain opinions of counsel with respect to any patents of potential concern.

I would like for you to coordinate this project for us. There follows a list of matters which should be reviewed in connection with this study. As you know, we will be meeting in Switzerland later this month with you and our Swiss patent advisors to discuss this subject with European management. Here is the list.

- A review of the products which the BAT group is making today. Where is the original Barclay product being sold and where is the new product being sold? Are there variants of the new product?
- Existing product, process and apparatus patents of the BAT group, including Brown & Williamson
- Existing product, process and apparatus patents of other companies:
  - Filtrona
  - Imperial Tobacco
  - Rothmans
  - Other companies
- A thorough review of the scope of the claims of the existing patents of each company
- Publication of know-how in the field and its entry into the public domain
- A review of the German patent opposition proceeding and its possible value as a precedent in other countries
- Geographic coverage of the patents. In this connection we wish to know generally the geographical

Source: <https://www.industrydocuments.ucsf.edu/docs/rpdb0003>

spread of coverage. However, for purposes of the discussion in Switzerland, the following should be given priority: USA, Germany, Switzerland, Benelux, Saudi Arabia, Kuwait, UK and Norway.

- New PM developments in the field. Our research people will need to advise patent counsel (through the Neuchatel patent group) as to the specific type of channel ventilated product which we are developing.
- Existing patents of PM in this area including the Filosa and Osmolov patents
- Sourcing: Must we have patent coverage in both the place of manufacture and place of sale? If this is the case, patent counsel must be advised as to the likely manufacturing source for markets in the Middle East and the EEC.

Regarding the Swiss situation, we wish to discuss the following questions:

- What are the advantages of a nullity action versus an infringement action?
- How long will the litigation last including the trial phase and appeals?
- What is the risk of bringing out a product prior to the start of litigation? Following the start of litigation but before the conclusion of trial? After the trial decision but prior to a decision on appeal? What is the possibility of an injunction at any stage?
- If a patent is upheld and ruled to be infringed, how will damages be measured? Will a court try to measure lost profits or make an award based upon an assumed royalty?
- Which improvement patents should be included in the nullity action? What is the risk regarding the non-included patents?
- What will the legal expenses be and who pays them?

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